

AMENDED IN SENATE MARCH 23, 2009

SENATE BILL

No. 108

Introduced by Senator Walters

January 27, 2009

~~An act to add and repeal Section 815.1 of the Government Code, relating to government tort claims, and declaring the urgency thereof, to take effect immediately. An act to amend Section 47612 of the Education Code, relating to charter schools.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 108, as amended, Walters. ~~Government tort claims: charter schools.~~ *Charter Schools: government tort claims.*

Existing law, the California Tort Claims Act, governs the tort liability and immunity of, and claims and actions against, public entities and their officers and employees. A public entity, as defined, is not liable for an injury, except as otherwise provided by statute, whether the injury arises out of an act or omission of the public entity or a public employee or any other person.

~~Existing law~~

The Charter Schools Act of 1992 specifies that a charter school is deemed to be a school district for purposes of statutory provisions regarding apportionments from the State School Fund, allowances for transportation, and state lottery funds and provisions of the California Constitution regarding the calculation of the minimum amount of funding for the support of school districts and community college districts.

This bill would specify that a charter school shall be deemed a political subdivision for purposes of the California Tort Claims Act and other specified statutory provisions regarding public agencies. By

subjecting charter schools to the duties imposed on public agencies by these statutory provisions, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~This bill would authorize the California Law Revision Commission to submit a report to the Legislature, on or before May 1, 2009, that addresses the question of whether charter schools should be added to the list of public agencies covered by the California Tort Claims Act.~~

~~The provisions of the bill would be repealed on January 1, 2010.~~

~~This bill would declare that it is to take effect immediately as an urgency statute.~~

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 47612 of the Education Code is amended
2 to read:
3 47612. (a) A charter school shall be deemed to be under the
4 exclusive control of the officers of the public schools for purposes
5 of Section 8 of Article IX of the California Constitution, with
6 regard to the appropriation of public moneys to be apportioned to
7 ~~any~~ a charter school, including, but not limited to, appropriations
8 made for the purposes of this chapter.
9 (b) The average daily attendance in a charter school ~~may~~ shall
10 not, ~~in any event~~, be generated by a pupil who is not a California
11 resident. To remain eligible for generating charter school
12 apportionments, a pupil over 19 years of age shall be continuously
13 enrolled in public school and make satisfactory progress towards
14 award of a high school diploma. ~~The State Board of Education~~
15 ~~shall, on or before January 1, 2000, adopt regulations defining~~
16 “satisfactory progress.”

(c) A charter school shall be deemed to be a “school district” for purposes of Article 1 (commencing with Section 14000) of Chapter 1 of Part 9 of *Division 1 of Title 1*, Section 41301, Section 41302.5, Article 10 (commencing with Section 41850) of Chapter 5 of Part 24 of *Division 3*, Section 47638, and Sections 8 and 8.5 of Article XVI of the California Constitution.

(d) A charter school shall be deemed a “political subdivision” for purposes of *Division 3.6* (commencing with Section 810) of *Title 1 of, Chapter 23* (commencing with Section 7530) of *Division 7 of Title 1 of, and Article 3* (commencing with Section 53050) of *Chapter 1 of Part 1 of Division 2 of Title 5 of the Government Code*.

SEC. 2. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of *Division 4 of Title 2 of the Government Code*.

SECTION 1. ~~Section 815.1 is added to the Government Code, to read:~~

~~815.1.—(a) The California Law Revision Commission may submit a report to the Legislature, on or before May 1, 2009, that addresses the question of whether charter schools should be added to the list of public agencies covered by this division.~~

~~(b) This section shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2010, deletes or extends that date.~~

~~SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:~~

~~In order to authorize the California Law Revision Commission to promptly prepare and submit a report to the Legislature that would assist the Legislature in determining whether to amend existing law to protect charter schools from imminent financial harm as a result of a recent Court of Appeal decision, *Knapp v. Palisades Charter High School* (2007) 146 Cal.App.4th 708, which held that charter schools are not public entities for purposes of the Tort Claims Act (*Division 3.6* (commencing with Section 810) of~~

- 1 Title 1 of the Government Code), it is necessary that this act take
- 2 effect immediately.

O